

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

742I0550

## SENATE JUDICIARY COMMITTEE ENGROSSED NO. **HB 1117** - 02/12/2003

Introduced by: Representatives Michels, Adelstein, Cradduck, Cutler, Gillespie, Hunhoff, Kraus, LaRue, Madsen, Murschel, O'Brien, Olson (Mel), and Schafer and Senators Schoenbeck, Albers, de Hueck, Knudson, McCracken, Moore, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to provide for the enforcement of foreign domestic violence  
2 protection orders.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 25-10 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Any domestic violence protection order issued by a court of competent jurisdiction of  
7 another state, Indian tribe, the District of Columbia, or a commonwealth, territory, or possession  
8 of the United States is enforceable as if the order was issued by a court in this state if all of the  
9 following requirements are satisfied:

- 10 (1) The respondent received notice of the order in compliance with requirements of the  
11 issuing jurisdiction;
- 12 (2) The order is in effect in the issuing jurisdiction;
- 13 (3) The issuing court had jurisdiction over the parties and the subject matter;
- 14 (4) The respondent was afforded reasonable notice and opportunity to be heard sufficient



1 to protect that person's right to due process. In the case of ex parte orders, notice and  
2 opportunity to be heard must have been provided within the time required by the law  
3 of the issuing jurisdiction; and, in any event, within a reasonable time after the order  
4 was issued, sufficient to protect the respondent's due process rights;

5 (5) If the order also provides protection for the respondent, a petition, application, or  
6 other written pleading was filed with the issuing court seeking such an order and the  
7 issuing court made specific findings that the respondent was entitled to the order; and

8 (6) The prohibited conduct violative of the foreign protection order could be prohibited  
9 by a protection order if issued in this state.

10 Any protection order meeting the requirements of this section is a foreign domestic violence  
11 protection order.

12 Section 2. That chapter 25-10 be amended by adding thereto a NEW SECTION to read as  
13 follows:

14 Any person entitled to protection under a foreign domestic violence protection order may  
15 file the foreign order in the office of any clerk of a circuit court in this state. The person filing  
16 the foreign order shall also file with the clerk of a circuit court an affidavit certifying the validity  
17 and status of the order and attesting to the person's belief that the order has not been amended,  
18 rescinded, or superseded by any orders from a court of competent jurisdiction. If a foreign order  
19 is filed under this section, the clerk of a circuit court shall enter the order in the law enforcement  
20 protection order database. Filing of a foreign order under this section is not a prerequisite to the  
21 order's enforcement in this state. No fee may be assessed for filing the foreign order.

22 Section 3. That chapter 25-10 be amended by adding thereto a NEW SECTION to read as  
23 follows:

24 A law enforcement officer may rely upon any foreign domestic violence protection order that

1 has been provided to the officer by any source. The officer may make an arrest pursuant to § 25-  
2 10-13 for any violation of the foreign order in the same manner as for violation of a protection  
3 order issued in this state. A law enforcement officer may rely on the statement of the person  
4 protected by the foreign order that the order is in effect and that the respondent was personally  
5 served with a copy of the order. A law enforcement officer acting in good faith and without  
6 malice in enforcing a foreign order under this section is immune from civil or criminal liability  
7 for any action arising in connection with the enforcement of the foreign domestic violence  
8 protection order.

9 Section 4. That chapter 25-10 be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 Any person who intentionally provides a law enforcement officer with a copy of a foreign  
12 domestic violence protection order known by that person to be false, invalid, or not in  
13 compliance with the requirements of section 1 of this Act, or who, if served with such a  
14 protection order, denies having been served with the protection order, is guilty of a Class 1  
15 misdemeanor.

16 Section 5. That chapter 25-10 be amended by adding thereto a NEW SECTION to read as  
17 follows:

18 Failure to satisfy any of the requirements of section 1 of this Act is an affirmative defense to  
19 any prosecution for a violation of the foreign domestic violence protection order or any process  
20 filed seeking enforcement of the order in this state.